

NFP  
CLM

**MEMORANDUM TO  
THE HONORABLE FREDERIC BLOCK  
Senior United States District Judge**

**RE: MBANZA, Araza  
Docket No. 07-CR-696  
REQUEST TO DISCLOSE  
PRESENTENCE REPORT**

We are writing to request the Court's permission to disclose a copy of the above-named offender's Presentence Report, to the Executive Office for Immigration Review, Immigration Court. A copy of the subpoena requesting same is attached for Your Honor's review. Specifically, Mr. Mbanza has an immigration hearing before said Court scheduled for October 30, 2009.

By way of background, this offender was sentenced by Your Honor on August 1, 2008, to fifteen months custody followed by three years supervised release. A \$100 special assessment and the following special condition were also imposed: the defendant shall not re-enter the U.S. illegally, once deported. This sentence followed Mbanza's conviction for Importation of Heroin into the United States, a class C felony. He was released from the Bureau of Prisons on September 26, 2008, to an Immigration and Customs Enforcement (ICE) detainer, given his illegal status in the United States. He remains in ICE custody. Mbanza's supervision commenced on inactive status effective September 26, 2008, and is scheduled to terminate on September 25, 2011.

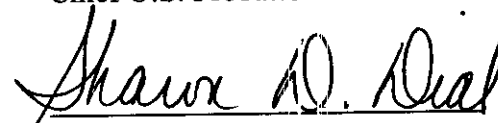
It is the position of the General Counsel of the Administrative Office of the U.S. Courts that presentence and supervision records of the U.S. Probation Department are confidential and cannot be released without the permission of the sentencing court. *Guide to Judiciary Policies and Procedures*, Vol. X, Chap. IV, Part D, pg. 34-35, *Federal Probation*, Sept. 1993, pg. 76-80. The General Counsel's opinion appears to be consistent with the case law in this circuit. See *U.S. v. Charmer*, 711 F. 2d 1164 (2d Cir.1983), holding that releasing a presentence report to a third party is permissible only when the court finds such disclosure is in the interest of justice.

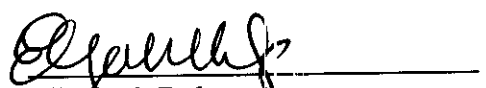
**REQUEST TO DISCLOSE PRESENTENCE REPORT**

We believe disclosure would be in the interest of justice in this case, as the Presentence Report would provide Immigration Court officials with more information to make an informed decision.

Respectfully Submitted:

EILEEN KELLY  
Chief U.S. Probation Officer

  
Sharon D. Dial  
Researcher/Statistician

  
Elizabeth Daly  
Supervising U.S. Probation Officer

October 8, 2009  
Brooklyn, New York

Attachment

THE COURT ORDERS:

☒ Permission to Disclose Presentence Report Granted.

☐ Permission to Disclose Presentence Report Denied.

  
s/FB

Judicial Signature

  
Date

10.16.09

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
201 Varick Street, Room 1140  
New York, NY 10014

SUBPOENA

To: US Probation Dept.  
NY Eastern District  
147 Pierpont St.  
Brooklyn, NY 11201

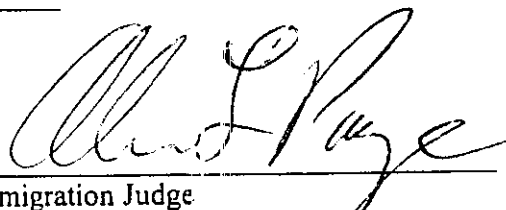
Re: Amza Mbianza  
AKA: \_\_\_\_\_  
Alien# A 097 536 546  
Indictment#(s): CR 07 696  
County of Conviction: Eastern Dist  
NYSID FBI 477-271 TCB

Date: 9/30/09

You are hereby commanded to produce a cumulative pre-sentence report before the Immigration Court at 201 Varick Street, Room 1140, New York, New York, on the 30th day October of October, 2009 at 5 am/pm in connection with proceedings being conducted under the authority of the Immigration and Nationality Act.

Prepared By

Name Susan M Beschta  
Address DHS ICE OCC, 201 Varick St. Rm 1130 NY, NY 10014  
Telephone Number 212 863-3560

  
Immigration Judge

RETURN ON SERVICE OF SUBPOENA

I hereby certify that on the 30 day of October, 2009, I served the above subpoena on the witness named by \_\_\_\_\_.

Susan M Beschta ACC  
Name Title